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In re Application of  
Scott Fink et al.  
Application No. 09/522,026  
Filed: October 8, 1998  
Attorney Docket No. 1958P1705DIV

**DECISION GRANTING PETITION**

This is a decision on the petition filed May 17, 1999 requesting that the divisional Continued Prosecution Application (CPA) filed October 8, 1998 and based on prior application No. 08/644,916 (issued as Patent No. 5,847,450 on December 8, 1998) be treated as a divisional application under 37 CFR 1.53(b), rather than under 37 CFR 1.53(d), and be accorded a filing date of October 8, 1998.

On October 8, 1998, the application was submitted requesting treatment as a CPA under 37 CFR 1.53(d) based on prior application No. 08/644,916.

On May 17, the present petition and petition fee was submitted. The petition states that the use of the CPA transmittal form was incorrect and inadvertent and that petitioners intended to file the divisional application under the provisions of 37 CFR 1.53(b) rather than 37 CFR 1.53(d). Petitioners request that the application be treated as a divisional application under 37 CFR 1.53(b).

The application papers have been removed from the file of the prior application, placed in a new file wrapper and assigned Application No. 09/522,026. All future correspondences regarding this divisional application should be directed to that application number.

It is noted that the application papers filed on October 8, 1998 include a complete specification including an abstract and 10 claims and a copy of the declaration from the parent application, No. 08/644,916. However, since the specification contains matter not found in the prior application, the copy of the declaration submitted on filing, which executed the parent application, cannot execute this application. Accordingly, to perfect the filing of this divisional application, petitioners must submit an oath or declaration in compliance with 37 CFR 1.63, identifying the specification to which it is directed (preferably by reference to the above-identified application number and filing date). The surcharge for this late filing is \$130.00 for a large entity. 37 CFR 1.16(e).

Petitioners are given **one month** from the date of this decision to file the oath or declaration and the surcharge required above in order to avoid abandonment of the application. This time period may be extended pursuant to 37 CFR 1.136(a). The response should be directed to the attention of the Office of Initial Patent Examination.

The petition is **granted**.

The application is being forwarded to the Office of Initial Patent Examination for further processing as a divisional application filed under 37 CFR 1.53(b), not under 37 CFR 1.53(d), with a filing date of October 8, 1998, using the application papers filed October 8, 1998 and the declaration filed in response to the decision.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Karen Canaan at (703) 36-3313.

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